

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

NOVO NORDISK A/S,)	
)	
Plaintiff,)	
)	
v.)	Civ. No. 05-645-SLR
)	
SANOFI-AVENTIS, AVENTIS)	
PHARMACEUTICALS, INC., AVENTIS)	
PHARMA DEUTSCHLAND GMBH,)	
)	
Defendants.)	

ORDER

At Wilmington this 23rd day of April, 2007, having reviewed *in camera* the unredacted version of the October 5, 2005 memorandum at issue, as well as the deposition transcript of Stefan Schwarz;

IT IS ORDERED that, on or before **May 7, 2007**, defendants¹ must produce all internal² documents that relate to the subject of infringement of the '408 patent (i.e., defendants' obligation to produce is not limited to those documents that relate to the opinion letter itself), including the following additional material from the October 5, 2005 memorandum: The first sentence describing the report (prior to Section I) and Section II (pages 1-2). My reasoning is as follows: The question of willfulness is directed to the

¹Defendants are relying on an opinion of counsel relating to non-infringement of the '408 patent.

²By "internal" documents, I mean those documents in defendants' files at the time the opinion letter was authored.

knowledge and intent of a defendant's decision-makers. Because the opinion letter at bar addresses only the issue of infringement, the scope of the waiver likewise is limited to the issue of infringement, i.e., all information related to infringement that was reasonably available to the decision-makers, whether they actually received the information or not. To put the point another way, a company cannot keep its decision-makers in the dark and limit the willfulness inquiry to the information fed to the decision-makers. On the other hand, I do limit the scope of production to internal documents and do not extend production to opinion counsel's files (other than those documents received directly from the client and/or used directly by counsel in connection with the opinion letter).



United States District Judge